RECORD AND BRIEFS

Supreme Court, U.S.
FILED
DEC 23 2016
OFFICE OF THE CLERK

Nos. 15-1358, 15-1359, 15-1363

IN THE

Supreme Court of the United States

JAMES W. ZIGLAR,

Petitioner,

v.

AHMER IQBAL ABBASI, *et al.*,

Respondents.

(Caption continued on inside cover)

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* IMMIGRATION DETENTION ADVOCACY ORGANIZATIONS IN SUPPORT OF RESPONDENTS

PROFESSOR RANJANA NATARAJAN
UNIVERSITY OF TEXAS SCHOOL OF LAW
727 E. DEAN KEETON ST.
AUSTIN, TX 78705

BRIAN J. MURRAY
Counsel of Record
JONES DAY
77 West Wacker Drive
Chicago, IL 60601
(312) 782-3939
bjmurray@jonesday.com

WILLIAM R. WEAVER
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001

DECEMBER 23, 2016

Counsel for Amici Curiae

No. 15-1359

JOHN D. ASHCROFT, former U.S. Attorney General, and ROBERT MUELLER, former Director of the FBI,

Petitioners,

v.

AHMER IQBAL ABBASI, *et al.*,

Respondents.

No. 15-1363

DENNIS HASTY and JAMES SHERMAN,

Petitioners,

v.

AHMER IQBAL ABBASI, *et al.*,

Respondents.

QUESTIONS PRESENTED

1. Whether this action, seeking damages from federal officials for violating the constitutional rights to due process of law and equal protection of the laws of persons detained in a federal correctional facility, presents a novel context for the remedy authorized in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

2. Whether the detailed factual allegations in this case, which are supported by a Department of Justice Report and specifically exclude the "obvious alternative explanation" that was dispositive in *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009), state a claim under Federal Rule of Civil Procedure 12(b)(6).

3. Whether selecting certain non-citizens for solitary confinement and other punitive treatment based solely on their race, religion, ethnicity, or national origin, without any basis to suspect a connection to terrorism, violated these individuals' clearly established constitutional rights to due process of law and equal protection of the laws.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. CONGRESS AND DHS HAVE EXPANDED IMMIGRATION DETENTION WITH LITTLE ATTENTION TO CURBING WIDESPREAD ABUSES 3

A. Immigration Detention Has Expanded Dramatically 6

B. Detention Adversely Affects Immigrants and Includes Those Who Pose Little or No Risk 9

C. DHS's Callous Disregard of Abuses is Evidenced by Lax and Ineffective Supervision and Oversight 10

II. NON-CITIZENS IN IMMIGRATION DETENTION CONTINUE TO FACE UNLAWFUL ABUSE AND DEPRIVATIONS 14

A. Medical Neglect 14

B. Physical Abuse and Excessive Force 19

C. Arbitrary and Retaliatory Use of Extended Solitary Confinement 21

D. Sexual Assault 25

TABLE OF CONTENTS
(continued)

Page

E. Children in Detention 28

F. Interference With Religious Practice..... 30

G. Conditions of Confinement..... 31

III. BECAUSE OF DHS'S REPEATED FAILURES, *BIVENS* IS NEEDED AS A CHECK ON ABUSES IN IMMIGRANT DETENTION 34

A. DHS and ICE Have a Track Record of Failing to Correct Systemic Abuses.... 34

B. DHS and ICE Have No Plans to Ensure Safe, Humane Conditions of Confinement in the Future 35

C. The *Bivens* Remedy is an Essential Tool to Check the Worst Abuses in Immigrant Detention 36

CONCLUSION 37

APPENDIX

TABLE OF AUTHORITIES

Page(s)

CASES

Baires v. United States,
No. 09-cv-05171 CRB, 2011 WL
6140998 (N.D. Cal. Dec. 9, 2011) 16

Baires v. United States,
No. 09-cv-5171 CRB, 2010 WL
3515749 (N.D. Cal. Sept. 8, 2010) 15, 16

Correctional Serv's Corp. v. Malesko,
534 U.S. 61 (2001) 37

Davis v. Ayala,
135 S. Ct. 2187 (2015) 22

Davis v. Passman,
442 U.S. 228 (1979) 37

Doe v. Neveleff,
No. A-11-cv-907-LY, 2013 WL 489442
(W.D. Tex.), *report and*
recommendation adopted, No. A-11-
cv-907-LY, 2013 WL 12098684 (W.D.
Tex. Mar. 12, 2013) 27. 28

Doe v. Robertson,
751 F.3d 383 (5th Cir. 2014) 28

Zadvydas v. Davis,
533 U.S. 678 (2001) 3

Zikianda v. Cty. of Albany,
No. 1:12-cv-1194, 2015 WL 5510956
(N.D.N.Y. Sept. 15, 2015) 17

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

8 U.S.C. § 1101(a)(13)(C) 7

8 U.S.C. § 1225(b) 7

8 U.S.C. § 1226 7

8 U.S.C. § 1231(a) 7

OTHER AUTHORITIES

8 C.F.R. 1236.1 7

ACLU, *Prisoners of Profit: Immigrants and Detention in Georgia* (2012) 24. 31

ACLU, *Sexual Abuse in Immigration Detention* (last visited Dec. 20, 2016) 25

ACLU, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* (2016) 4, 6, 7, 10

ACLU *et al.*, *Fatal Neglect: How ICE Ignores Deaths in Detention* (2016) 14, 15

American Bar Association, *ABA Civil Immigration Detention Standards* (2012) 11

Anonymous Declaration #3, Am. Immigr. Lawyers Ass'n, Doc. No. 1510060 (2016) 33

TABLE OF AUTHORITIES
(continued)

Page(s)

Michael Barajas, *Texas May Call Them Childcare Centers, Critics Say They're Prisons*, HOUSTON PRESS (Nov. 25, 2015) 18, 19

Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children through the Immigration System*, VERA INSTITUTE OF JUSTICE (2012) 8

Sonya Chung and Andrea Savdie, *Isolated In Essex: Punishing Immigrants Through Solitary Confinement*, NEW YORK UNIVERSITY SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC *et al.* (2016) 22, 24

CIVIC & Detention Watch Network, *Abuse In Adelanto: An Investigation Into A California Town's Immigration Jail* (2015) 31

Compl., *Zikianda v. Cty. of Albany*, No. 1:12-cv-1194 (N.D.N.Y. Sept. 15, 2015), ECF No. 1 ..... 17, 18

César Cuauhtémoc García Hernández, *Naturalizing Immigration Imprisonment*, 103 CAL. L. REV. 1449, (2015) 6

Bethany Davis, *Corrections Corporation of America Rebrands as CoreCIVIC* (Oct. 28, 2016) 8

TABLE OF AUTHORITIES
(continued)

Page(s)

Declaration of Hilda Ramirez, Am. Immigr. Lawyers Ass'n, Doc. No. 1510060 (2016) 33

Bernard Dreyer, *Dreyer: Immigration Detention Centers Are No Place for Children*, HOUSTON CHRONICLE (Dec. 16, 2015) 30

Detention Oversight, *Detainee Death Review: Santiago Sierra Sanchez* (2014) 16, 17

Detention Watch Network *et al.*, *Banking on Detention: 2016 Update* (2016) 9

Detention Watch Network *et al.*, *Banking on Detention: Local Lockup Quotas and the Immigrant Dragnet* (2015) 9

Detention Watch Network, *Expose and Close: Etowah County Detention Facility* (2012) 32

Ingrid Early and Steven Shafer, *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL (2016) 5

Liz Farmer, *Immigrant Detention Centers Are More Like Jails, Mothers Say*, DALLAS MORNING-NEWS (May 14, 2016) 33

TABLE OF AUTHORITIES
(continued)

Page(s)

Renée Feltz, *Immigration Facility Guard Given Jail Time for Sexual Assault of Detainee*, THE GUARDIAN (Apr. 23, 2016) 27

GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care* (2016) 35

GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards* (2014) 35

Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities* (Dec. 1, 2016) 8, 10, 36

Human Rights First, *Family Detention in Berks County, Pennsylvania,* (2015) 18

Human Rights First, *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers* (2016) 9, 10

Human Rights Watch, *Deaths in Immigration Detention* (July 7, 2016) 16, 17

TABLE OF AUTHORITIES
(continued)

Page(s)

Human Rights Watch, *"Do You See How Much I'm Suffering Here?": Abuse against Transgender Women in US Immigration Detention* (2016) 25

Hutto Hunger Strike Reportedly Growing Despite ICE Denials, TEXAS OBSERVER (Nov. 5, 2015).....32

ICE Weekly Departures and Detentions Report (2016) 10

Immigration and Customs Enforcement, *List of Deaths in ICE Custody* (Oct. 31, 2016) 14

Megan Jula and Daniel Gonzalez, *Eloy Detention Center: Why So Many Suicides?*, AZCENTRAL (July 29, 2015) 19

Letter from Christina Mansfield, CIVIC, to Sarah Saldana, ICE; and John Roth, and Megan Mack, DHS (July 14, 2015) 20, 21

Letter from Katherine Traverso, ACLU of Northern California, to Sarah Saldana, Timothy Aitken, and Monty LaFave, ICE (Nov. 12, 2015).....19, 20

Letter from Mary Meg McCarthy, National Immigrant Justice Center, to Margo Schlanger, DHS (Apr. 13, 2011) 25

TABLE OF AUTHORITIES
(continued)

Page(s)

Letter from Rep. Michael M. Honda *et al.*, U.S. House of Representatives, to Secretary jeh Johnson, DHS (June 23, 2015) 28

Letter from Rep. Zoe Lofgren *et al.*, U.S. House of Representatives, to Secretary Jeh Johnson, DHS (May 27, 2015) 28

Jeffrey Metzner and Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY LAW 104 (2010) 24

National Immigrant Justice Center, *Ensuring Fairness and Justice in Detention Centers: Codifying and Independent Monitoring are Critical Components* (2009) 11

National Immigrant Justice Center, *ICE's Failed Monitoring of Immigration Detention Contracts* (2016) 11

National Immigrant Justice Center, *Immigration Detention Bed Quota Timeline* (2016) 6

TABLE OF AUTHORITIES
(continued)

Page(s)

National Immigrant Justice Center *et al.*, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* (2012) 22, 23, 25, 31

National Immigration Law Center *et al.*, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (2009) 13, 34

National Immigration Project of the Lawyers Guild *et al.*, *Petition to Initiate Rule-making* (Jan. 24, 2007).....11

National Prison Rape Elimination Commission, *Report* (2009) 25

Steven Nelson, *Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business*, U.S. NEWS & WORLD REPORT (Aug. 18, 2016) 4

Notice of Dismissal, *Ramirez-Martinez v. United States*, 14-cv-5273-RJB (W.D. Wash. May 12, 2014), ECF No. 17 23

Performance-Based National Detention Standards 2011, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT 11

TABLE OF AUTHORITIES
(continued)

Page(s)

Ed Pilkington, *Child Immigrant Detainees: 'There's An Overwhelming Sadness Among Them'*, THE GUARDIAN (May 12, 2015) 29

Pub. Hr'g Regarding Proposed 40 TAC § 748.7, Tex. Dep't of Fam. & Prot. Servs. (Dec. 9, 2015) 30

Press Release, U.S. Dep't of Justice, *Detention Officer Sentenced for Repeated Sexual Abuse of Detainees* (Apr. 7, 2010) 27

Catherine Rentz, *How Much Sexual Abuse Gets "Lost in Detention"?*, PBS FRONTLINE (Oct. 19, 2011) 26

Martin Rosenbluth, *In Texas, N.C. Attorney Finds 'Jail' for Immigrants*, CHARLOTTE OBSERVER (Apr. 30, 2016) 19

S. Ct. R. 37.2 1

S. Ct. R. 37.6 1

Dora Schiriro, *Immigration Detention Overview and Recommendations*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (2009) .....

William Selway and Margaret Newkirk, *Congress's Illegal-Immigration Detention Quota Costs $2 Billion a Year*, BLOOMBERG BUSINESSWEEK (September 26, 2013) 9

TABLE OF AUTHORITIES
(continued)

Page(s)

Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*,. 34 Crime & Just. 441 (2006) 22

Southern Poverty Law Center, *Shadow Prisons: Immigrant Detention In The South* (2016) ..... *passim*

The Immigration Detention Transparency and Human Rights Project, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* (2015) .....

Third Am. Compl., *Baires v. United States*, No. 09-cv-5171 CRB (N.D. Cal. Aug. 8, 2011), ECF No.122 ..... 15, 16

Transaction Records Access Clearinghouse, *Secure Communities and ICE Deportation: A Failed Program?* (Apr. 8, 2014) 10

U.S. Commission on Civil Rights, *With Liberty And Justice For All: The State Of Civil Rights At Immigration Detention Facilities* (2015) 13, 31

TABLE OF AUTHORITIES
(continued)

Page(s)

Ian Urbina and Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. TIMES (Mar. 23, 2013) 22

Mónica Ortiz Uribe, *Federal Detention Facility In West Texas Called Out After Inmates Complain Of Inhumane Treatment*, FRONTERAS (Mar. 16, 2016) 33

Hector Velazquez *et al.*, *A Report on the Medical Care and Treatment of ICE Detainees Housed in the Hudson County Correctional Center* (2016) 33

WKWB Staff, *Detention Facility Workers Allegedly Used Bad Poultry, Placed On Leave*, WKBW (Jul. 21, 2016) 31

Matt Zapotosky and Chico Harlan, *Justice Department Says It Will End Use of Private Prisons*, WASH. POST (Aug. 18, 2016)..... 36

INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae, listed in the appendix to this brief, are non-profit organizations which advocate for the due process rights of immigrants who are detained by the Department of Homeland Security (DHS) pending the completion of administrative removal proceedings or, for some, pending removal from the country. Amici advocate for and provide services to countless detained immigrants in facilities throughout the country. Amici have a deep interest in protecting detained immigrants from unduly harsh, punitive, and dangerously substandard conditions of confinement, and in ensuring that detained immigrants have avenues of redress, including the *Bivens* remedy, when they have suffered abuses in detention that violate the U.S. Constitution.

Amici include 22 Immigration Detention Advocacy Organizations, including Human Rights Watch, the National Immigrant Justice Center, and the Southern Poverty Law Center. Amici's statements of interest are appended to the brief.

SUMMARY OF ARGUMENT

Each day, approximately 33,000 immigrants are detained by the Department of Homeland Security at over 200 detention facilities across the country,

totaling more than 400,000 detainees each year. Although this detention is civil—pending the completion of administrative removal proceedings or pending removal from the country—the conditions of confinement essentially resemble criminal incarceration. DHS detains immigrants in prison-like conditions, complete with jumpsuits, headcounts, restricted movement inside the facility, and limited family visitation.

Immigration detention, which has vastly expanded in the last two decades, is plagued by widespread abuses. Detained immigrants have been subjected to medical and mental health failures, sexual assault, punitive use of solitary confinement, and dangerously unsanitary conditions. DHS maintains no binding regulations for immigration detention facilities and regularly approves the continued use of facilities where egregious abuses occur, without implementing significant or sometimes any reforms. DHS has shown a callous disregard for correcting widespread, serious abuses in detention facilities across the country.

Given the sustained reliance on detention for immigration enforcement, there are no signs that abuses will abate in the future. Yet the petitioners argue, inter alia, that *Bivens* claims of unconstitutional conditions of confinement must fail. They argue that respondents' treatment in immigration detention amounted to a "new context" because their detention, immediately following the 9/11 tragedy, implicated matters of national security, potentially sensitive intelligence information, and immigration policy. By arguing that immigration policy, which authorizes immigration detention,

should per se foreclose *Bivens* claims, the petitioners would close federal courts to all immigrant detainees with claims of unconstitutional treatment during their detention.

Preserving a *Bivens* remedy for claims of unconstitutional treatment arising out of immigration detention is critical for two reasons. First, DHS officials have approved a system of confinement with minimal safeguards for detainees' physical well-being and constitutional rights, as well as ineffective oversight. Second, DHS's systemic disregard of egregious detention conditions has resulted in constitutional abuses in what should be non-punitive civil detention. Preserving the *Bivens* remedy is thus important to promoting accountability and serving as a backstop against constitutional violations in the immigration detention context.

ARGUMENT

I. CONGRESS AND DHS HAVE EXPANDED IMMIGRATION DETENTION WITH LITTLE ATTENTION TO CURBING WIDESPREAD ABUSES

Immigration detention, as the government has itself stated, is civil administrative detention that is not intended to be punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); Dora Schriro, *Immigration Detention Overview and Recommendations*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, at 2 (2009), https://goo.gl/od3E2x. Detention is for the purposes of assuring the immigrant's appearance at removal proceedings or at removal, and to prevent any danger to the community. Nevertheless, immigration detention occurs in county jails or in facilities that look and function like jails, from high

walls with razor wire to jumpsuits.

Immigration detention has expanded dramatically in the last three decades and now ensnares over 400,000 people each year. Approximately two-thirds of detained immigrants are awaiting completion of lengthy removal proceedings, with one-third awaiting execution of their removal orders. ACLU, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* (2016), https://goo.gl/uEEJbH. The law mandates detention for immigrants with certain prior criminal convictions, immigrants with final removal orders, and those seeking admission at the border. For the remainder, including some long-term residents and asylum seekers in removal proceedings, detention is not mandatory and is purportedly based on individualized flight risk and danger considerations. However, from 2009 on, Congress has, in fact, eschewed individualized decisions by requiring that DHS detain a minimum of approximately 33,000 people each day.

Immigration detention facilities are largely privatized, lack binding regulations, and are poorly overseen. U.S. Immigration and Customs Enforcement (ICE), the arm of DHS that oversees detention, relies heavily on facilities run by private contractors and state and local entities. Steven Nelson, *Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business*, U.S. NEWS & WORLD REPORT (Aug. 18, 2016), https://goo.gl/sBkl3O. To regulate these facilities, ICE imposes non-binding standards that are more suited to prisons and jails than to civil immigration detention, which should be less restrictive and non-punitive. ACLU, *Shutting*

Down the Profiteers, at 8–9. ICE's system of monitoring compliance with these standards is also weak and ineffective, and fails to ensure safe, humane conditions of confinement.

As a result, the story of immigration detention is one of widespread abuses ranging from fatal medical neglect, to punitive overuse of solitary confinement, to sexual abuse and unsanitary conditions. Harsh and punitive detention conditions not only lead to deterioration in medical and mental health, but also discourage immigrants from pursuing their applications for relief from removal by reducing their chances of obtaining counsel and adequately preparing their cases. Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL, at 5 (2016), https://goo.gl/lUlhM8. ICE officials know of these abuses and condone them by taking few if any corrective measures, and ICE's system of non-binding standards and minimal oversight has proven largely ineffective at preventing abuses.

Given the widespread abuses in immigration detention, and the callous disregard of ICE officials, maintaining the *Bivens* remedy as a mechanism of redress for detained immigrants is critical. The abuses faced by respondents in this case may have occurred because of targeting based on their actual or perceived religion or ethnicity, but similarly serious abuses in immigration detention continue to be widespread. The *Bivens* remedy should be preserved because it is an important mechanism to promote accountability and deter future abuses in immigration detention.

A. Immigration Detention Has Expanded Dramatically

The number of detained immigrants has grown drastically in the last three decades. In 1985, the average daily population was less than 5,000; by 2015, it had grown to almost 35,000. César Cuauhtémoc García Hernández, *Naturalizing Immigration Imprisonment*, 103 CAL. L. REV. 1449, 1466 (2015). As a result of changes in the 1996 immigration law, the average daily population grew from less than 10,000 to almost 20,000 by 2001. ACLU, *Shutting Down the Profiteers*, at 7. As a result of policies favoring detention post-9/11, the average daily population climbed again, reaching over 30,000 by 2008. *Id.* In 2009, Congress for the first time established a minimum daily detention requirement of "not less than" 33,400 people. National Immigrant Justice Center, *Immigration Detention Bed Quota Timeline*, at 3–4 (2016), https://goo.gl/3VC0u0. In subsequent years, Congress continued to impose a similar minimum detention bed quota, and ICE detention has typically remained well above 30,000. *Id.*

In general, ICE detains three categories of adult immigrants: those with pending administrative removal proceedings, those seeking admission at the border, and those with pending removal orders. The first group, immigrants with pending administrative removal (or deportation) proceedings, includes people who are applying for asylum, withholding of removal, cancellation of removal, and other types of relief from removal. They may ultimately win their cases and never be removed. Except for a sub-group of immigrants with certain criminal convictions whose

detention pending removal proceedings is mandated by statute, 8 U.S.C. § 1226(c), the remainder of this group is subject to discretionary detention. *Id.* § 1226(a). Their detention is authorized only if they pose a significant flight risk or danger to the community. *Id.*; 8 C.F.R. 1236.1.

The second group includes people seeking admission at the border but lacking documents for lawful admission. 8 U.S.C. § 1225(b). These immigrants must be detained until they are removed through summary "expedited removal" procedures or until they are found to have credible fear and referred to removal proceedings where they may apply for asylum or withholding of removal, at which point their detention is no longer mandatory. It also includes certain legal permanent residents who are treated as if they are seeking admission. *Id.* § 1101(a)(13)(C). The third group, immigrants who have removal orders that will be executed, includes people who lost their cases in removal proceedings. *Id.* § 1231(a). It also includes recent entrants at the border who are ordered removed at the border after summary "expedited removal" procedures, *id.* § 1225(b)(i)(B)(iii)(IV), and immigrants for whom ICE has reinstated a prior removal order after they re-entered. *Id.* § 1231(a)(5).

Included in ICE detention are children detained with their parents. Starting in 2014, DHS sharply increased the detention of families with children, including babies and toddlers. This year, DHS is filling over 3,000 family detention beds. ACLU,

Shutting Down the Profiteers, at 22–23.[2]

ICE detains immigrants in several types of secure, facilities. According to a recent DHS review, federally owned and directed facilities house 10% of all detained immigrants. Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, at 5 (Dec. 1, 2016), https://goo.gl/hHVPWe ("HSAC Report"). Private, for-profit prison contractors hold approximately 65% of all detained immigrants. *Id.* at 6. These include detention facilities owned and operated by private prison companies such as the Corrections Corporation of America (CCA) and the GEO Group (GEO).[3] County jails and similar facilities operated by state and local governments and secure facilities contracted through the U.S. Marshals Service hold the remaining 25% of detained immigrants. *Id.*

---

[2] Another agency, the Office of Refugee Resettlement, within the Department of Health and Human Services, holds immigrant children who are unaccompanied by adult guardians at the time of their apprehension in shelters, and secure and therapeutic facilities. Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children through the Immigration System* VERA INSTITUTE OF JUSTICE (2012), https://goo.gl/jqQs4a.

[3] On October 28, 2016, CCA announced that it had rebranded its name to CoreCIVIC. Bethany Davis, *Corrections Corporation of America Rebrands as CoreCIVIC* (Oct. 28, 2016), https://goo.gl/JUFfZT. For the sake of clarity, the brief refers to the company as CCA.

B. Detention Adversely Affects Immigrants and Includes Those Who Pose Little or No Risk

The adverse effects of detention are well-established. Detention inhibits immigrants from finding counsel, communicating with counsel, and preparing and winning their cases. Human Rights First, *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers*, at 4 (2016), https://goo.gl/mGxXWQ. Detention also causes deterioration in detainees' physical and mental health. *Id.* at 31–32. Detention puts financial and emotional strain on detainees' families, including U.S. citizen family members. *Id.* at 31. When detention conditions are unduly harsh or constitutionally deficient, these harms multiply.

DHS's immigration detention contracts, which now cost U.S. taxpayers over $2 billion dollars each year, promote over-detention. William Selway and Margaret Newkirk, *Congress's Illegal-Immigration Detention Quota Costs $2 Billion a Year*, BLOOMBERG BUSINESSWEEK (September 26, 2013), https://goo.gl/Cc89sD. In many contracts, ICE guarantees payment for a certain number of detention beds to a contractor whether or not those beds are occupied. Detention Watch Network *et al.*, *Banking on Detention: Local Lockup Quotas and the Immigrant Dragnet* (2015), https://goo.gl/BDlRsc. ICE then fills those beds—regardless of whether individuals pose risk of flight or danger—so as to avoid payment without any services received. *Id.*; *see also*, Detention Watch Network *et al.*, *Banking on Detention: 2016 Update* (2016), https://goo.gl/Vu4Qih.

Immigration detention includes those who pose little or no public safety risk. First, ICE's latest figures show that approximately 20,000 individuals in detention each day have no prior criminal convictions, compared to 15,000 who do. *See ICE Weekly Departures and Detentions Report*, at 6 (2016), https://goo.gl/wY7YQ3. Second, the vast majority of those with prior criminal convictions were convicted of low-level crimes. *See* Transaction Records Access Clearinghouse, *Secure Communities and ICE Deportation: A Failed Program?* (Apr. 8, 2014), https://goo.gl/lRW43a.

Third, ICE detains more asylum seekers than it previously did, even though research shows they typically pose very little danger or flight risk, and respond well to community-based supervision. ACLU, *Shutting Down the Profiteers*, at 19-20, 21–22. The number and percent of asylum-seekers held in immigration detention has increased from 15,683 in FY 2010 (or 45 percent of all asylum-seekers in removal proceedings) to 44,228 in FY 2014 (or 77 percent). *Lifeline on Lockdown*, at 2.

C. DHS's Callous Disregard of Abuses is Evidenced by Lax and Ineffective Oversight

ICE has the ultimate responsibility to ensure that detention conditions meet minimum constitutional requirements. *HSAC Report*, at 6. ICE has failed in this important duty at every stage of the process, from setting the minimum standards of confinement, to ensuring that facilities comply with those standards, to providing oversight to correct systemic failures that impact all detention facilities.

First, ICE has failed to adopt the appropriate minimum standards for immigration detention. In 2000, ICE developed written detention standards applicable to all immigration detention facilities, which ICE later revised and strengthened in 2008 and again in 2011. In 2012, the American Bar Association noted that ICE's standards are more suited to correctional facilities than to civil detention. American Bar Association, *ABA Civil Immigration Detention Standards*, at 3–5 (2012), https://goo.gl/uLoIpH. The ABA noted that restrictions on the liberty of immigrants imposed to assure their appearance at proceedings or at removal should be the "least restrictive, non-punitive means necessary to further these goals." *Id.* at 4. The ABA recommended placing immigrants in secure "residential" settings, not jails, with full access to counsel, medical and psycho-social care, their own clothes, and freedom of movement within the facility, among other privileges not typically found in correctional facilities. *Id.* at 4–5. ICE's 2011 Performance Based National Detention Standards ("PBNDS 2011") do not provide these basic protections. *See* Performance-Based National Detention Standards 2011, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, https://goo.gl/EmkhLB.

Second, DHS has doggedly refused to make ICE Detention Standards into binding regulations, despite repeated requests for rulemaking by advocates. *See, e.g.*, National Immigration Project of the National Lawyers Guild *et al.*, *Petition to Initiate Rule-making* (Jan. 24, 2007), https://goo.gl/ORo60c; National Immigrant Justice Center, *Ensuring Fairness and Justice in Detention Centers: Codifying*

and Independent Monitoring are Critical Components (2009), https://goo.gl/oOJ3vX.

Third, ICE has even failed to require all detention facility operators to comply with the most current, and most protective, 2011 version of the Detention Standards. As of 2016, the older 2000 and 2008 versions of the Detention Standards were still used in facilities that house 10% and 15%, respectively, of the detained population. National Immigrant Justice Center, *ICE's Failed Monitoring of Immigration Detention Contracts* (2016), https://goo.gl/7daoDC. The patchwork of non-binding standards sows confusion and breeds inconsistency.

Fourth, ICE disregards evidence of widespread abuses and approves facilities for continued use each year, without requiring reforms. Each year, ICE makes a one-time inspection of facilities that hold 50 or more immigrants, reviewing their compliance with the detention standards. *Id.* at 2. In addition, ICE conducts sporadic inspections as needed at facilities that hold 50 or more immigrants to check on compliance with key standards where the facility has previously had problems. *Id.* ICE also performs less frequent reviews of facilities that hold less than 50 people and facilities that hold detainees for less than 72 hours. *Id.*

The inspections are designed to avoid accountability. They are announced in advance, allowing facilities ample time to hide substandard conditions. *Id.* They are conducted through checklist-based instruments by inspectors who engage in perfunctory reviews to "track whether or not policies exist rather than inquire into their

implementation or effectiveness." The Immigration Detention Transparency and Human Rights Project, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, at 2, 13 (2015), https://goo.gl/1AANqY. The reviews do not invite or allow qualitative data collection. *Id.* They do not require detainee interviews. *Id.* And, most importantly, they do not impose meaningful consequences for failures. *Id.*

ICE's inspections have failed to produce greater systemic compliance with the Detention Standards, or safe and humane conditions of confinement. In 2009, a report reviewing years of ICE inspection reports concluded that inspections had not produced greater compliance. National Immigration Law Center *et al.*, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers*, at 7–8 (2009), https://goo.gl/kLJ4jT. In 2015, the U.S. Commission on Civil Rights noted after a robust review of detention facilities that, "[e]vidence suggests that DHS is not fully implementing select portions of the standards to the detriment of immigrant detainees." U.S. Commission on Civil Rights, *With Liberty And Justice For All: The State Of Civil Rights At Immigration Detention Facilities*, at 28 (2015), https://goo.gl/Zz8hWg. "[B]ecause these standards do not have enforcement mechanisms, facilities are not held accountable when they fail to maintain or meet th[o]se standards—at times with tragic results." *Id.* at 25. Year after year, DHS disregards credible, mounting evidence of systemic abuses in detention.

II. Non-Citizens In Immigration Detention Continue To Face Unlawful Abuse And Deprivations

The result of all the foregoing is this: *People suffer in immigration detention.* They have serious medical problems that go ignored. They are beaten by guards. They are put in solitary confinement for weeks for arbitrary reasons, as retaliation for complaining, or because they are LGBTQ. They are raped. They include very young children who are sick and afraid because they do not know how long they will remain imprisoned. They are served spoiled food or foul-smelling water, and they get infections from unsanitary cells. Reports of serious suffering emerge regularly from every detention center across the country, every year, described in patterns that are disturbingly regular.

A. Medical Neglect

165 people have died in ICE custody since October 2003. Immigration and Customs Enforcement, *List of Deaths in ICE Custody* (Oct. 31, 2016), https://goo.gl/fvJdMc. The average age at death is 44. *Id.* Most of those people died because of medical conditions; many of those deaths could have been prevented by timely and appropriate care. *See* ACLU *et al.*, *Fatal Neglect: How ICE Ignores Deaths in Detention*, at 7–21 (2016), https://goo.gl/ERwJR4 (describing 8 preventable deaths).

A few examples illustrate the point. Pablo Gracida-Conte died of heart failure in Arizona's Eloy Detention Center despite showing serious symptoms for almost a month. *Id.* at 10–12. In early October 2011, Gracida-Conte complained of a 10 out of 10

pain level, burning abdominal pain, and daily vomiting; medical staff ordered tests and recommended a blander diet. *Id.* at 11. He reported the same symptoms a week later, but was not referred to a doctor. *Id.* A week after that, he complained of shortness of breath, increased level of pain during meals, and difficulty sleeping. *Id.* Two days later, a nurse found that he had an irregular heart rate, rapid respiratory rate, low blood pressure, and a weight gain of five pounds in six days; he was not referred to higher-level care until the next day, when he could not complete a sentence without stopping to breathe. *Id.* He died three days after finally being referred to a hospital. *Id.* A doctor who reviewed Mr. Gracida-Conte's case concluded that his "death might have been prevented if the providers, including the physician at [Eloy], had provided the appropriate medical treatment in a timely manner." *Id.* at 12.

Juan Carlos Baires was a 26-year-old HIV-positive man who died from an untreated staph infection he developed in the Lerdo Detention Facility in Bakersfield, California. Third Am. Compl. at 2, *Baires v. United States*, No. 09-cv-5171 CRB (N.D. Cal. Aug. 8, 2011), ECF No.122 ("Third Am. Compl."). Baires told Lerdo staff that he was HIV-positive upon his arrival, and he told a Lerdo doctor the next day. *Baires v. United States*, No. 09-cv-5171 CRB, 2010 WL 3515749, at *3 (N.D. Cal. Sept. 8, 2010). He had been taking HIV medication, but was denied HIV medication at Lerdo. *Id* at *2–*3. By the next week, he had developed a painful foot infection that caused him to drag his foot behind him as he walked. *Id.* at *3. Instead of prescribing Baires any HIV medication

or antibiotics, the Lerdo doctor gave him Tylenol and sent him on his way. Third Am. Compl. at 21. The following week, when the Lerdo doctor diagnosed Baires' swollen ankle as a possible bone infection, he gave Baires crutches but did not order tests or prescribe antibiotics. *Id.* at 23. The facility then skipped his immunology appointment required to approve his HIV medication. *Id.* at 24. Baires was taken to the emergency room on November 11, 2008, 23 days after he was admitted to Lerdo and his HIV medications were cut off, when medical staff became alarmed by his high pulse and low blood pressure. *Id.* at 25. He was diagnosed with a staph infection, pneumonia, and kidney failure; doctors performed surgery on his lower leg. *Id.* at 25–26. He was in critical condition at the time of surgery, and died of cardiorespiratory arrest on November 12. *Baires*, 2010 WL 3515749, at *3. A district court, later commenting on Lerdo's "horrifically inadequate medical care," stated: "At this point, there is no real dispute that [Baires'] allegation[s are] true; the question instead is who can be held responsible." *Baires v. United States*, No. 09-cv-05171 CRB, 2011 WL 6140998, at *1 (N.D. Cal. Dec. 9, 2011).

Santiago Sierra-Sanchez was a 38-year-old man who died in 2014 from a staph infection that went untreated in the Utah County Jail. Human Rights Watch, *Deaths in Immigration Detention* (July 7, 2016), https://goo.gl/eUcIX8. Sierra-Sanchez told jail staff upon his arrival that he had terrible back pain; he needed help standing up and sitting down, and was wheeled around in an office chair or a wheelchair. Office of Detention Oversight, *Detainee Death Review: Santiago Sierra Sanchez*, at 3–4 (2014),

https://goo.gl/Cr3Gjo. Medical staff did not take his temperature at intake, or several hours later when a nurse found that he had an "elevated pulse and borderline high blood pressure." *Id.* at 7. The jail's nurse suspected Sierra-Sanchez "might be playing games to get narcotic pain medication" and did not follow standard protocols regarding back pain, which included consulting a provider. *Id.* He also told the nurse he was spitting blood, but he was not believed. *Id* at 8. Although he was placed on 15-minute watch that night, only three 15-minute checks were done. *Id.* Video surveillance also showed that when the officer actually did walk past Sierra-Sanchez's cell, he often did not look at Sierra-Sanchez. *Id.* at 8–9. He was discovered in the middle of the night face down in a pool of bloody vomit, and died later that morning of a staph infection that resulted in severe pneumonia. *Id.* at 10, 12. Medical experts who reviewed Sierra-Sanchez's death concluded that the jail's neglect contributed to his death. *Deaths in Immigration Detention.* "Medical staff essentially abandoned this patient by not properly assessing him or following up," remarked one expert. *Id.*

Irene Bamenga died while detained in the Albany County Correctional Facility (ACCF) in New York. *Zikianda v. Cty. of Albany*, No. 1:12-cv-1194, 2015 WL 5510956, at *2 (N.D.N.Y. Sept. 15, 2015). Bamenga suffered from chronic congestive heart failure, a condition which weakened her heart, but which she had been successfully treating with a medication regimen. Compl. at 9–11, *Zikianda v. Cty. of Albany*, No. 1:12-cv-1194 (N.D.N.Y. July 26, 2012), ECF No. 1. She told ICE officials about her health condition and provided them with her

medication, but she was not allowed to take her medication for three days. *Id.* at 11–12. Instead, a nurse practitioner at the Allegany County Jail provided her with only some of her medication without consulting a doctor. *Id.* at 12. When Bamenga was transferred to ACCF a week later, along with her prescribed medications, the facility's doctor provided her with different medications without consulting her treating physician. *Id.* at 14–15. She told medical staff in writing that she was having shortness of breath and dizziness, and that she was not taking the right medication. *Id.* at 16. Eleven days after she was detained, she received a full medical assessment; she was found dead in her cell the next day. *Id.* at 16–17.

One theme in particular emerges: For whatever reason, detainees are often told to "drink more water" in lieu of medical treatment, even for serious conditions. A detainee at the Berks County Residential Center in Pennsylvania, for example, said that her six-year-old daughter had to be hospitalized because of a fever; the doctor prescribed acetaminophen to manage it. Human Rights First, *Family Detention in Berks County, Pennsylvania,* at 8 (2015), https://goo.gl/LLXHUx. When they returned to Berks, the facility's medical staff refused to fill the acetaminophen prescription, saying they had done their own assessment, and that the child should simply "drink more water."

An eight-year-old boy recently released from the Karnes County Residential Center in Texas had to be hospitalized for pneumonia and a 105-degree fever just an hour after leaving the facility. Michael Barajas, *Texas May Call Them Childcare Centers,*

Critics Say They're Prisons, HOUSTON PRESS (Nov. 25, 2015), https://goo.gl/OS4o1d. The mother said she begged Karnes staff for medical attention for days, but they simply told her to make him drink more water. *Id.*

Indeed, reports of medical staff simply telling detainees to "drink more water" are disturbingly common to different facilities all across the country. *See* Megan Jula and Daniel Gonzalez, *Eloy Detention Center: Why So Many Suicides?*, AZCENTRAL (July 29, 2015), https://goo.gl/FxbeML ("They'd tell you to drink water," a detainee reported. "That's all you need, more water, they'd tell you."); Martin Rosenbluth, *In Texas, N.C. Attorney Finds 'Jail' for Immigrants*, CHARLOTTE OBSERVER (Apr. 30, 2016), https://goo.gl/gyislg (describing how parents of seriously ill kids were told to have them drink more water); Southern Poverty Law Center, *Shadow Prisons: Immigrant Detention In The South*, at 32 (2016), https://goo.gl/R67XW4 (many detainees at LaSalle Detention Center told to drink water in response to medical care requests).

B. Physical Abuse and Excessive Force

Detainees also regularly report that they are mistreated by guards. Especially disturbing are the numerous independent reports by detainees that they have been beaten by guards who want them to sign paperwork that waives their legal rights.

In 2015, Mesa Verde Detention Center (Bakersfield, CA) guards broke Heleno Garcia Ramirez's arm to force him to give them his fingerprints and sign removal paperwork. Letter from Katherine Traverso, ACLU of Northern

California, to Sarah Saldana, Timothy Aitken, and Monty LaFave, ICE, at 2 (Nov. 12, 2015), https://goo.gl/I95kMW. After Ramirez refused to sign paperwork he believed would result in his deportation, two guards grabbed him by his right arm, another grabbed his left, and a fourth put his arms around Ramirez's neck. *Id.* They bent him over a counter, and the guard holding his left arm bent it backwards until Ramirez heard a snap. *Id.* Then they forced Ramirez to give them his fingerprints. *Id.* A doctor had to put Ramirez's arm in a plaster cast for a month, and then in a brace. *Id.*

A number of detainees at Etowah County Jail in Alabama have reported that guards take detainees into isolated rooms and beat them to pressure them to sign removal paperwork. Letter from Christina Mansfield, CIVIC, to Sarah Saldana, ICE; and John Roth, and Megan Mack, DHS, at 3 (July 14, 2015) ("CIVIC has received numerous complaints in the form of in-person witness testimony, phone call conversations, and letters indicating that there was an ongoing practice of people detained by ICE being beaten by ICE officers when they resisted signing travel documents."); *see also Shadow Prisons*, at 58 ("This investigation found several reports of abuse of force, including the use of physical force by ICE agents to coerce detainees to sign travel document and provide fingerprints.").

For example, in 2013, one Etowah detainee was taken from his cell in handcuffs and brought to an ICE office where he was beaten by three ICE officers. Letter from Christina Mansfield, CIVIC, to Sarah Saldana, ICE; and John Roth, and Megan Mack, DHS (July 14, 2015). They ordered him to sign papers,

forced his head down and pulled his arms back, and forced his thumb print on a piece of paper that they never gave him a chance to read. *Id.* The detainee sought medical assistance and filed a grievance, only to be transferred days later to the LaSalle Detention Center in Louisiana. *Id.* Several witnesses provided written statements that they saw the detainee being taken out of his cell and returned to his cell with injuries. *Id.* And, in a series of 2016 interviews, several Etowah detainees reported that Leonardo Gutierrez, a fellow detainee, was assaulted by four ICE agents to coerce him to sign travel documents. *Shadow Prisons* at 58. One detainee who witnessed the incident described it this way: "[The] deportation officer hit [him] in the head and slammed him against the wall, because [he] did not want to sign papers. . . . Everyone in the unit saw it happen." *Id.*

A detainee at Baker County Detention Center in Florida reported that a guard beat him after he asked for the air conditioning to be adjusted. *Id.* at 47. The request enraged the guard, who slammed the detainee's head on the floor, pinned him down, and handcuffed him. *Id.* Another guard moved the detainee into the hallway, where he was held down as a guard twisted his testicles. *Id.* The man was eventually taken to the medical unit, where he received several stitches. *Id.* He was told not to report what had happened, placed in segregation for two days, and then transferred to another facility. *Id.* The Southern Poverty Law Center's investigation found many detainees who had been assaulted at Baker and then transferred to another facility. *Id.*

C. Arbitrary and Retaliatory Use of Extended Solitary Confinement

Solitary confinement is "a further terror and peculiar mark of infamy." *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (quoting *In re Medley*, 134 U.S. 160 (1890)). It can have serious psychological, psychiatric, and sometimes physiological effects. Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Just. 441, 502 (2006) (noting that "[a] long list of possible symptoms from insomnia and confusion to hallucinations and outright insanity has been documented"). And yet, detainees are often isolated for extended periods for arbitrary or retaliatory reasons.

A recent investigation revealed that on any given day, 300 immigrants are held in solitary confinement at the 50 largest detention facilities. Ian Urbina and Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. TIMES (Mar. 23, 2013), https://goo.gl/YZuxtV. Half were isolated for over two weeks; 1 in 9 was isolated for over two months. *Id.* For example, a detainee in Oakdale Federal Detention Center in Louisiana was segregated for eight months without review; the man was never found guilty of violating a facility rule. National Immigrant Justice Center *et al.*, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, at 23 (2012), https://goo.gl/Nm6sVI. A detainee in New Jersey's Essex County Correctional Facility was sentenced to 15 days in solitary confinement after refusing to close his food port and demanding to see a sergeant when he found worms in his food. Sonya Chung and Andrea Savdie, *Isolated In Essex: Punishing*

Immigrants Through Solitary Confinement, NEW YORK UNIVERSITY SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC *et al.*, at 26 (2016), https://goo.gl/2kRMrD. Another man in Illinois' Tri-County Detention Center was segregated for a month after he tried to advocate on behalf of a Muslim detainee who could not speak English well; each day, the warden would ask him if he was "broken" yet. *Invisible in Isolation*, at 17.

Female detainees at Louisiana's LaSalle Detention Center recently reported being placed in solitary simply because the facility was overcrowded and there was nowhere else to place them; one woman said she spent an entire week in solitary. *Shadow Prisons*, at 34. A detainee in Stewart Detention Center in Georgia spent 28 days in solitary confinement after complaining about worms in the food; guards said he was "agitating the detainees." *Id.* at 41.

Detention centers also use solitary confinement to punish detainees for exercising their First Amendment rights when they go on hunger strike to protest conditions in the facility. In 2014, the ACLU of Washington State had to sue ICE to ask that they release hunger strikers from solitary confinement in the Northwest Detention Center in Tacoma. *See* Notice of Dismissal, *Ramirez-Martinez v. United States*, 14-cv-5273-RJB (W.D. Wash. May 12, 2014), ECF No. 17 (plaintiffs voluntarily dismissed case two months after being segregated when the facility ended their isolation). Similarly, in recent years, eight detainees were put in solitary confinement in Essex County Correctional Facility for going on hunger strike; they spent an average of 15 days in solitary, longer than for any other category of

offense—including physical altercations. *Isolated In Essex*, at 22–23. A detainee at Etowah reported that a hunger strike resulted in a facility-wide lockdown for two weeks. *Shadow Prisons*, at 59.

Mentally ill detainees suffer especially serious harm in solitary confinement; isolation exacerbates the symptoms of mental illness and increases suicide risk. Jeffrey Metzner and Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY LAW 104, 105 (2010). Ermis Calderone, a detainee who suffered from bipolar disorder and frequent panic attacks, was segregated for over six months at Stewart Detention Center in 2011. ACLU, *Prisoners of Profit: Immigrants and Detention in Georgia*, at 63 (2012), https://goo.gl/Zld1Lm. He stopped receiving his prescribed medication, suffered a panic attack, and began hitting himself in the head and striking his head against the wall. *Id.* Guards who saw Calderone hurting himself threw him to floor and cuffed him. *Id.* A nurse told Calderone that he had had a stroke and that he should stop saying it was a panic attack; an outside physician later confirmed that he had had had a panic attack. *Id.* Calderone was placed in segregation even though nobody was hurt or threatened; he remained in solitary confinement for six months. *Id.* When ACLU lawyers eventually spoke with Calderone, his knuckles were bruised from punching the wall of his cell, and his arms and wrists were still raw and scabbed from a recent suicide attempt. *Id.*

LGBTQ detainees also face an increased risk of extended solitary confinement. Washoe County Jail's policy states that people with "overt homosexual

tendencies" may be held in administrative segregation. *Invisible in Isolation*, at 19. A detainee at the Houston Processing Center was segregated for four months simply because he presented "effeminately." Letter from Mary Meg McCarthy, National Immigrant Justice Center, to Margo Schlanger, DHS, at 5 (Apr. 13, 2011), https://goo.gl/DAAZcQ. In a recent interview of 28 transgender women in Santa Ana City Jail in California, half said they had been held in solitary confinement, some for as long as eight weeks. Human Rights Watch, *"Do You See How Much I'm Suffering Here?": Abuse against Transgender Women in US Immigration Detention*, at 35 (2016), https://goo.gl/4ym1XH. One transgender detainee said that she was kept in solitary confinement for over four months at a Louisiana facility because "they told me I couldn't be housed with other people. . . . A guard told me it was 'because I had long hair and breasts.' . . . One of the guards told me that he was 'tired of seeing faggots.'" *Id.* at 36.

D. Sexual Assault

Advocates who interview detainees also routinely hear reports of sexual assault in detention centers. *See, e.g.*, ACLU, *Sexual Abuse in Immigration Detention* (last visited Dec. 20, 2016), https://goo.gl/zmTsq3 (mapping 200 allegations of sexual abuse over a four-year period). Detainees are isolated, powerless, and afraid of being removed; guards have enormous power over them. National Prison Rape Elimination Commission, *Report*, at 21–22 (2009), https://goo.gl/MBMlrz ("Many factors . . . make immigration detainees especially vulnerable to sexual abuse. . . . Because immigration detainees are

confined by the agency with the power to deport them, officers have an astounding degree of leverage.").

A former transportation guard at Texas' Willacy Detention Center told reporters that cover-ups of sexual and physical abuse were "pervasive" at Willacy. Catherine Rentz, *How Much Sexual Abuse Gets "Lost in Detention"?*, PBS FRONTLINE (Oct. 19, 2011), https://goo.gl/dwjC1O. In one instance, a manager called the guard in to transport a female detainee who claimed she'd been raped; the detainee was still in the medical unit receiving a rape kit. *Id.* The guard said the manager asked her to find the next flight out for the detainee. *Id.* "Make sure nobody talks to her," he said. *Id.* "Don't say nothing to her. Just get her in the van and meet up with the U.S. Marshals up at the airport." *Id.*

A detainee interviewed for that same report illustrated how sexual assault in detention centers gets buried. She said that a Willacy guard had repeatedly made advances on her, and ultimately penetrated her with his fingers. *Id.* When she pushed him away and threatened to report him, he replied, "Who's going to believe you? You're criminals. You're a detainee. Who are you going to go complain to?" *Id.* He later added, "If you tell anyone, you wouldn't come out of here alive to see your family." *Id.* Another guard told her it was "useless" to complain, and that complaining would only make things worse. *Id.* To escape her assailant, she agreed to be deported immediately. *Id.*

Despite the difficulty of reporting and proving sexual assault, detainees are sometimes able to bring their suffering to light. In 2016, a guard at Berks County Residential Center was convicted of sexually

assaulting a 19-year-old detainee from Honduras. Renée Feltz, *Immigration Facility Guard Given Jail Time for Sexual Assault of Detainee*, THE GUARDIAN, (Apr. 23, 2016), https://goo.gl/Sd55bl. The guard demanded she have sex with him, which she acquiesced to under pressure. *Id.* In a statement to the court, she said: "Whenever I'd denied his demands, he'd get very angry and humiliated me. . . . He would tell me that if immigration ever found out, my son and I would be deported instantly, which is why I obeyed." *Id.* The rape only came to light after a seven-year-old girl told a psychologist at the facility that she had a hard time falling asleep and was "afraid" to go to the bathroom after witnessing the guard and the detainee together in a bathroom stall. *Id.*

In 2009, a guard at the Port Isabel Detention Center in Texas pleaded guilty to sexually assaulting a number of women. Press Release, U.S. Dep't of Justice, *Detention Officer Sentenced for Repeated Sexual Abuse of Detainees* (Apr. 7, 2010), https://goo.gl/mOK6kX. The guard would sneak into medical isolation rooms where he would grope female detainees, assuring them that he had been ordered to examine them by a physician and instructing them to disrobe. *Id.*

In 2009–10, a male guard sexually assaulted eight female detainees held at the T. Don Hutto Residential Center in Taylor, Texas, while he was driving them to bus or airport stations and nobody else was around. *Doe v. Neveleff*, No. A-11-cv-907-LY, 2013 WL 489442, at *2 (W.D. Tex.), *report and recommendation adopted*, No. A-11-cv-907-LY, 2013 WL 12098684 (W.D. Tex. Mar. 12, 2013). The officer

would stop at a gas station or house, or simply pull off to the side of the road, and then grope or fondle the women. *Id.* He later pleaded guilty to state and federal criminal charges arising from these assaults. *Doe v. Robertson*, 751 F.3d 383, 385 (5th Cir. 2014).

LGBTQ detainees face a special risk of sexual abuse. In a 2015 letter to the head of DHS, 35 U.S. Representatives expressed their concern that LGBTQ detainees were "extremely vulnerable to abuse, including sexual assault, while in custody." Letter from Rep. Michael M. Honda *et al.*, U.S. House of Representatives, to Secretary Jeh Johnson, DHS, at 1 (June 23, 2015), https://goo.gl/fvXoEa. They noted a Bureau of Justice Statistics study which found that LGBTQ detainees "experience sexual assault at up to ten times the rate of heterosexual men" in custody, and that "the situation is starker for transgender detainees . . . one in three [of whom] will be sexually abused within twelve months in custody. *Id.*

E. Children in Detention

The physical and mental suffering inherent in imprisonment falls especially hard on children incarcerated with their parents at family detention centers. Conditions in these facilities are troubling enough that 136 U.S. Representatives wrote a letter to the head of DHS in 2015 calling to "end the use of family detention." Letter from Rep. Zoe Lofgren *et al.*, U.S. House of Representatives, to Secretary Jeh Johnson, DHS, at 1 (May 27, 2015), https://goo.gl/adyzk5.

Detained children are exposed to a variety of risks and harms including medical neglect. Catherine Checas was a three-year old when she and her

mother Gladys were sent to Berks County Residential Center in Pennsylvania. Ed Pilkington, *Child Immigrant Detainees: 'There's An Overwhelming Sadness Among Them'*, THE GUARDIAN, (May 12, 2015), https://goo.gl/ijpYuc. One morning in 2015, Catherine started vomiting blood in front of her mother and the five other people in their cell. *Id.* When she sought help, Gladys said that facility staff simply told her that Catherine should "drink lots of water". *Id.* Only when Catherine's bloody vomiting continued into a fourth day was she taken to the local hospital. *Id.*

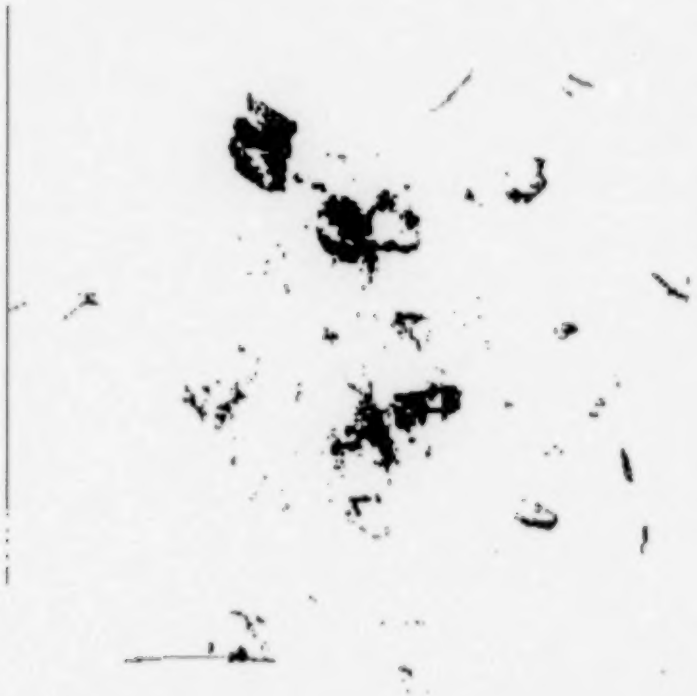

Image 1: Three-year-old detainee Catherine Checas' blood-stained shirt. Berks staff told her to "drink lots of water." *Id.*

The president-elect of the American Academy of Pediatrics recently visited Berks and decried its effects on the children there: "As a pediatrician, I am concerned that the federal government's current policy of detaining children is exacerbating their risk for physical and mental health problems and needlessly exposes them to additional trauma."

Bernard Dreyer, *Dreyer: Immigration Detention Centers Are No Place for Children*, HOUSTON CHRONICLE (Dec. 16, 2015), https://goo.gl/Y3XE1H. Dr. Dreyer stated: "Talking about their children, parents related symptoms of depression, anxiety, adjustment disorders, behavioral regressions and suicidality." *Id.*

Dr. Olivia Lopez, formerly the lead licensed social worker at Karnes, testified before a Texas state agency that the facility used "isolation and sensory deprivation against children and their mothers as punishment." *Pub. Hr'g Regarding Proposed 40 TAC § 748.7, Tex. Dep't of Fam. & Prot. Servs.*, at 24–25 (Dec. 9, 2015), https://goo.gl/cXPFRK (statement of Dr. Olivia Lopez). She also testified that she was reprimanded for recording mental health or medical issues, because "[it] was very clear that GEO [the company that operates the facility] did not want a paper trail." *Id.* at 26. She said families were frequently "turned away when they presented [guards] with serious issues"—one example being a toddler who was taken to the infirmary four times with serious abdominal pain before being taken to the hospital for an emergency appendectomy. *Id.* at 26–27.

F. Interference With Religious Practice

Religious minorities frequently report being denied the freedom to practice their religion in detention centers. Reports range from simple denial of the ability to practice to mockery and denigration from staff to outright cruelty.

A former GEO Group officer at the Adelanto facility in California explained that two Muslim men

were put into solitary confinement for "quietly saying their daily prayers together." CIVIC & Detention Watch Network, *Abuse In Adelanto: An Investigation Into A California Town's Immigration Jail*, at 22 (2015), https://goo.gl/UhcJdf. In 2016, three kitchen workers at the Batavia Federal Detention Center in New York were suspended for serving Muslim detainees chicken out of the garbage for their Ramadan meals. WKWB Staff, *Detention Facility Workers Allegedly Used Bad Poultry, Placed On Leave*, WKBW, (Jul. 21, 2016), https://goo.gl/q7jsrW. A Yemeni man in Wisconsin's Dodge County Detention Facility told officers that he was going to fast for 30 days during Ramadan, and requested that he be excused from meals. *Invisible in Isolation*, at 17. Officers responded by putting him in solitary confinement for the remainder of Ramadan. *Id.*

A Muslim detainee at the Irwin County Detention Center requested a halal diet, but the facility would not provide it; the chaplain told him that it was too expensive to provide religious diets such as kosher, so they do not provide them. *Prisoners of Profit*, at 101. Detainees at Baker County Detention Center and Wakulla County Detention Center in Florida recently reported difficulty getting religious meals. *Shadow Prisons*, at 50, 67. Muslim detainees at Stewart were removed from the "Ramadan list" because they broke their fast on one day. *With Liberty And Justice For All*, at 118–19.

G. Conditions of Confinement

Finally, non-citizens often face stark deprivations of basic needs. They are given meager portions of food that is sometimes spoiled or bug-infested. They

are held in cells that are unsanitary. Complaints like these are routine, and come from every type of facility across the country.

Detainees in Louisiana's LaSalle Detention Center reported that they had been served moldy bread, spoiled milk, and bad canned goods; a number of them said the food had given them nausea, diarrhea, or bacterial infections. *Shadow Prisons*, at 35. At Irwin County Detention Center in Georgia, detainees describe being served expired food, food with cockroaches, hair, or flies, and getting sick from the food.

In July 2012, 100 detainees at Etowah County Jail in Alabama went on hunger strike and sent a letter to ICE, complaining that the facility was serving food that was rotten and nutritionally inadequate. Detention Watch Network, *Expose and Close: Etowah County Detention Facility*, at 5 (2012), https://goo.gl/3cZguL. In 2015, 26 women in the T. Don Hutto Residential Facility went on a hunger strike to protest being "repeatedly served rotten milk and undercooked, and even uncooked, food." Alexa Garcia-Ditta, *Hutto Hunger Strike Reportedly Growing Despite ICE Denials*, TEXAS OBSERVER (Nov. 5, 2015), https://goo.gl/lY81yZ.

Detainees are often forced to drink dirty or foul-smelling water that makes them sick. Detainees warn new arrivals at Stewart Detention Center not to drink the water, which they say is "discolored and leads to serious illness." *Shadow Prisons*, at 42. Women held at the private South Texas Family Residential Center reported that the water there "tasted bad and made children sick with stomach

aches or vomiting." Liz Farmer, *Immigrant Detention Centers Are More Like Jails, Mothers Say*, DALLAS MORNING-NEWS (May 14, 2016), https://goo.gl/FMU9vG. A detainee at Karnes signed a declaration stating, "The water was Clorox. That's what it tasted and looked like." Declaration of Hilda Ramirez at 2, Am. Immigr. Lawyers Ass'n, Doc. No. 1510060 (2016), https://goo.gl/156xz5.

Detainees also report being held in filthy or unsanitary cells. In 2016, detainees in the West Texas Detention Center reported that guards told them to defecate in plastic bags after the water stopped working for three days and the toilets filled up with human waste. Mónica Ortiz Uribe, *Federal Detention Facility In West Texas Called Out After Inmates Complain Of Inhumane Treatment*, FRONTERAS (Mar. 16, 2016), https://goo.gl/mmv8Sv. A detainee in California's Otay Mesa Detention Center said that there were bed mites in the mattresses, and that he got scabies twice while detained there. Anonymous Declaration #3 at 3, Am. Immigr. Lawyers Ass'n, Doc. No. 1510060 (2016), https://goo.gl/156xz5. A committee investigating the Hudson County Correction Center in New Jersey recently found "credible evidence of a recurring problem with mold, flies and other unsanitary conditions in the shower and bathroom areas that could be the cause of bacterial infections." Hector Velazquez *et al.*, *A Report on the Medical Care and Treatment of ICE Detainees Housed in the Hudson County Correctional Center*, at 13 (2016), https://goo.gl/aK9fD2.

III. Because Of DHS's Repeated Failures, *Bivens* Is Needed As A Check On Abuses In Immigrant Detention

DHS has consistently failed to provide safe, humane conditions of confinement, and it has willfully disregarded system-wide abuses uncovered by advocates as well as its own inspections. Those failures are likely to continue unabated because, as evidenced by a recent DHS report, the agency has no viable plan to do otherwise. A *Bivens* remedy, therefore, remains an important check on abuses in detention.

A. DHS and ICE Have a Track Record of Failing to Correct Systemic Abuses

Eighteen years after adopting detention standards, DHS struggles to implement them. After intense lobbying by the American Bar Association to adopt standards to ensure detainee safety and protect detainee rights, ICE's precursor, the Immigration and Naturalization Service (INS) adopted detention standards in 1998 and expanded those standards to all facilities in 2000. *A Broken System*, at 4. From 2001 forward, advocacy groups documented numerous violations of the standards. *Id.* at xii, 2. The report highlighted the pervasive failures at detention facilities using ABA, UNHCR, and ICE's own inspection reports from 2001 through 2005. *Id.* at 2. In 2009, ICE recommended that it adopt standards appropriate for civil detention rather than pretrial criminal detention. *Immigration Detention Overview*, at 16. It also noted that improvements in medical care, recreation, access to law libraries, visitation, religious services, and segregation policies,

among other things, were needed. *Id.* at 21.

Recent reviews show that pervasive violations continue to exist. A 2015 study of ICE inspection data from 2007 to 2012 confirmed that "ICE's oversight practices under the Obama Administration remain fundamentally unchanged and unreformed." *Lives in Peril*, at 2. At six facilities, inspectors found substantive and pervasive violations of detention standards on medical care, suicide prevention, telephone access, recreation, visitation, and more. *Id.* at 17–28. Despite these failures, ICE did not discontinue use of these facilities or place facilities on probation to ensure corrective action. *Id.* at 29.

In addition, the Government Accountability Office (GAO) recently released two reports detailing ICE's persistent problems with respect to medical care and implementing the detention standards. *See* GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, at 37–38 (2016), https://goo.gl/9frhua; GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards*, at 33 (2014).

B. DHS and ICE Have No Plans to Ensure Safe, Humane Conditions of Confinement in the Future

Although much of the recent debate surrounding immigration detention has focused on privately operated facilities, that debate has obscured a larger point: DHS's problems are systemic, and abuses occur throughout all facilities. In August 2016, the U.S. Department of Justice released a report finding that private prisons housing Bureau of Prisons inmates

were less safe and less effective than government-run prisons. Matt Zapotosky and Chico Harlan, *Justice Department Says It Will End Use of Private Prisons*, WASH. POST, (Aug. 18, 2016), https://goo.gl/R7AqbD. As a result, DOJ instructed BOP to reduce and ultimately end its private prison contracts. *Id.* Shortly thereafter, DHS began a review of the use of private prisons in immigration detention. Although it declined to call for an end to private contracting, the Committee acknowledged the continuing challenges in maintaining safe, humane conditions in *all* immigration facilities. *See HSAC Report.* The Committee concluded, importantly, that "[s]ignificant challenges persist in assuring that actual on-the-ground practice lives up to the full requirements—in *all types of ICE detention facilities* (whether ICE-run, private-contractor-operated, or county jail)." *Id.* at 12 (emphasis added).

The future of immigration detention is unclear, as a new Secretary of Homeland Security takes the helm in coming weeks. But the DHS Committee Report makes one thing abundantly clear: The institutional failures that have plagued the immigrant-detention program in the United States will not abate, regardless of whether ICE decreases its reliance on private contractors. For at least the last thirty years, despite yearly inspections, reports, and studies, DHS has failed to protect the safety and basic rights of detainees.

C. The *Bivens* Remedy is an Essential Tool to Check the Worst Abuses in Immigrant Detention

Given the DHS failure to curb abuses, the

availability of the *Bivens* remedy to redress constitutional violations is critical to ensuring greater accountability and deterrence of future abuses. The Court should preserve the availability of *Bivens* to redress the most serious abuses in immigration detention, such as the ones alleged by respondents in this case.

Maintaining a *Bivens* remedy in the immigration context is essential to vindicate the rights of detainees and deter future abuses. "The purpose of *Bivens* is to deter individual federal officers from committing constitutional violations." *Correctional Serv's Corp. v. Malesko*, 534 U.S. 61, 70 (2001). Its remedial nature has also been recognized, particularly in situations where, for the plaintiffs, "it is damages or nothing." *Davis v. Passman*, 442 U.S. 228, 245 (1979) (quoting *Bivens*, 403 U.S. at 410 (Harlan, J., concurring in the judgment)). The availability of a *Bivens* remedy will vary from case to case. Nevertheless, keeping *Bivens* claims alive in the immigration context fits well within the purposes of the doctrine, as there will likely be no other effective deterrent to constitutional violations or remedy for detainees once those violations occur.

CONCLUSION

The extensive abuses of detained immigrants detailed above demand a *Bivens* remedy. DHS has failed to improve its policies and practices to ensure immigrants can be detained without Constitutional violations. The decision below maintains *Bivens* claims, a critical backstop against the worst abuses. It should be affirmed.

Respectfully submitted,

BRIAN J. MURRAY
Counsel of Record
WILLIAM R. WEAVER
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-4647
bjmurray@jonesday.com

PROFESSOR RANJANA
NATARAJAN
UNIVERSITY OF TEXAS
SCHOOL OF LAW
727 E. Dean Keeton St.
Austin, TX 78705

December 23, 2016

APPENDIX

APPENDIX–LIST OF *AMICI CURIAE*

Adelante Alabama Worker Center (Adelante) is a non-profit organization and a project of the National Day Laborer Organizing Network. Adelante unites low-wage and immigrant workers and their families in the Birmingham area to defend their rights, promote their dignity, and pursue justice for all. Adelante is the anchor organization for the Shut Down Etowah campaign, which aims to expose human rights abuses at the Etowah Detention Center in Gadsden, Alabama. Adelante co-authored the groundbreaking report *Shadow Prisons*, on conditions in immigrant detention in the South, and represents several Etowah detainees seeking release from extremely prolonged detention.

American Gateways (AG) is a non-profit immigration legal services provider based in Austin, Texas. AG provides pro bono and low-cost legal services to the low-income immigrant community throughout Central Texas, serving the cities of Austin and San Antonio and 19 surrounding counties. AG also provides legal education, assisted pro se workshops, and pro bono representation at four immigration detention centers in the region, including the T. Don Hutto Residential Center, the South Texas Detention Complex, the Karnes County Residential Center, and the South Texas Family Residential Center. AG's clients are DREAMers, families seeking reunification, and survivors of persecution, human trafficking, crime, and family violence.

Americans for Immigrant Justice (AI Justice) is a non-profit law firm dedicated to

promoting and protecting the basic rights of immigrants. Since its founding in 1996, AI Justice has served over 90,000 immigrants from all over the world. AI Justice clients include unaccompanied immigrant children; survivors of domestic violence, sexual assault, and human trafficking and their children; immigrants who are detained and facing removal proceedings; as well as immigrants seeking assistance with work permits, legal permanent residence, asylum and citizenship. Over the past two decades, AI Justice has served thousands of individual non-citizens who face prolonged detention. A substantial portion of AI Justice clients are children, some unaccompanied, who have been irreparably traumatized and victimized by abuse and violence and are seeking refuge as asylum seekers. In fact, AI Justice is the only organization in South Florida that represents minors detained in two permanent and one influx (temporary) local immigration shelters. Part of AI Justice's mission is to ensure that immigrants are treated justly, and to help bring about a society in which the contributions of immigrants are valued and encouraged. In Florida and on a national level, AI Justice champions the rights of immigrants; serves as a watchdog on immigration detention practices and policies; and speaks for immigrant groups who have particular and compelling claims to justice. AI Justice is dedicated to advancing and defending the rights of immigrants in detention.

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) is the national immigration detention visitation network, which is working to end U.S. immigration detention

by monitoring human-rights abuses, elevating stories, building community-based alternatives to detention, and advocating for system change. CIVIC provides weekly visits to people detained in over 43 immigration detention facilities through its network of affiliated visitation programs, and CIVIC receives over 7,000 calls per month from people detained in all 210 immigration detention facilities. Therefore, CIVIC works every day with people who face abuse in immigration detention. Last year, CIVIC filed federal complaints with the Office for Civil Rights & Civil Liberties at DHS on behalf of 125 people in immigration detention who were the victims of abuse and neglect. Many of these instances of abuse were perpetrated by officers inside the immigration detention facilities. Currently, CIVIC is working with 318 people who have reported abuse, including excessive use of solitary confinement, medical abuse/neglect, sexual harassment, rape, and physical abuse.

Detention Watch Network (DWN) is a coalition of approximately 200 organizations and individuals concerned about the impact of immigration detention on individuals and communities in the United States. DWN has a substantial interest in the outcome of this litigation. Founded in 1997, DWN has worked for more than two decades to fight abuses in detention, and to push for a drastic reduction in the reliance on detention as a tool for immigration enforcement. DWN members are lawyers, activists, community organizers, advocates, social workers, doctors, artists, clergy, students, formerly detained immigrants, and affected families from around the country. They are engaged

in individual case and impact litigation, documenting conditions violations, local and national administrative and legislative advocacy, community organizing and mobilizing, teaching, and social service and pastoral care. For years, DWN and its members have carefully documented egregious abuses inside of detention. DWN's interest in this litigation arises from how difficult it is to hold any person or entity meaningfully accountable to prevent the same abuses from being perpetrated again.

Families for Freedom (FFF) is a New York-based, multi-ethnic human rights organization by and for families facing and fighting deportation. FFF consists of and advocates for immigrant prisoners (detainees), former immigrant prisoners, their loved ones, or individuals at risk of deportation. Its members come from dozens of countries, across continents. FFF seeks to repeal the laws that are tearing apart homes and neighborhoods, build the power of immigrant communities as communities of color, and provide a guiding voice in the growing movement for immigrant rights as human rights. As people of color with criminal records, FFF members are constantly at risk of being "disappeared" through the policies FFF fight against. But for that reason, FFF must continue to fight.

Florence Immigrant and Refugee Rights Project (Florence Project) is a Legal Orientation Program (LOP) site of the Executive Office of Immigration Review. The Florence Project provides orientation services to detained adult men and women, as well as unaccompanied minors in removal proceedings. In 2015, over 11,000 detained children, men, and women facing removal charges observed a

Florence Project presentation on immigration law and procedure. That same year, Florence Project provided individualized pro se support services to approximately 2,500 detained adult immigrants. Every year, in addition to the aforementioned support to pro se respondents, the Florence Project also uses non-LOP funding to directly represent individuals before the Immigration Judge and Board of Immigration Appeals and provide social services to detained men, women, and children. All of the adult immigrants Florence Project assists are detained by ICE in remote locations in Florence and Eloy, Arizona. In any given year Florence Project encounters hundreds of detainees with complaints regarding medical neglect or mistreatment, substandard conditions, and other abuse that individuals may have faced in detention. The Florence Project provides information and basic translation assistance to detainees filing complaints with the Office of Civil Rights and Civil Liberties, but such complaints rarely result in significant changes in policy or oversight. The Florence Project firmly believes that all detainees in immigration custody deserve to have their fundamental constitutional and human rights respected.

Grassroots Leadership is an Austin, Texas-based national organization that works to end prison profiteering and reduce reliance on criminalization and detention through direct action, organizing, research, and public education. Since 2006, Grassroots Leadership has engaged in advocacy related to immigration detention policy. Between 2006 and 2009, Grassroots Leadership advocated as part of a successful campaign to end family detention

at the T. Don Hutto Detention Center in Taylor, Texas. When the Obama administration announced that it would stop detaining families at Hutto, only 100 family detention beds remained at a small facility in Berks County, Pennsylvania. However, after the wave of Central American families and children seeking refuge at the border in the summer of 2014, the administration reversed its decision, opening facilities at Karnes, Texas, and Dilley, Texas. Grassroots Leadership has operated a visitation program to the T. Don Hutto detention center since 2009 to break the isolation of detention, monitor human rights at the facility, and build advocates for reform of detention. Grassroots Leadership has authored or co-authored numerous publications on immigration detention issues including *Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota*, published in 2015, and *For-Profit Family Detention: Meet the Private Prison Companies Making Millions by Locking Up Refugee Families*, published in 2014.

Human Rights Watch is a non-profit, independent organization that investigates allegations of human rights violations in more than 90 countries around the world, including in the United States, by interviewing witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human rights violations have been found, Human Rights Watch advocates for the enforcement of those rights with governments and international organizations and mobilizes public pressure for change.

Immigrant Defense Project (IDP) is a not-for-profit legal resource and training center dedicated

to promoting fundamental fairness for immigrants accused or convicted of crimes. IDP provides defense attorneys, immigration attorneys, immigrants, and judges with expert legal advice, publications, and training on issues involving criminal, immigration, and detention law. IDP seeks to improve the quality of justice for immigrants accused of crimes, including those who are detained, and therefore has a keen interest in ensuring that detained noncitizens receive the full benefit of their constitutional and statutory rights. IDP has submitted amicus curiae briefs in many of this Court's key cases involving the interplay between criminal, immigration, and detention law and the rights of immigrants in the criminal and immigration systems.

Immigration Equality is a national organization that advocates for the rights of lesbian, gay, bisexual, transgender, queer, (LGBTQ) and HIV-positive immigrants. It directly represents hundreds of immigrants throughout the United States and provides free legal advice to thousands more. Many of Immigration Equality's clients have been detained by Immigration and Customs Enforcement while they were in removal proceedings. Immigration Equality also maintains a pro bono asylum project, provides technical assistance to attorneys, and maintains an informational website. Furthermore, Immigration Equality authored in large part *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*, the training module for United States Citizenship and Immigration Services.

National Immigrant Justice Center (NIJC) is a Chicago-based non-profit organization, accredited

since 1980 by the Board of Immigration Appeals (BIA) to provide representation to individuals in removal proceedings, including individuals in DHS custody. Together with area law school clinics and a network of 1,500 pro bono attorneys, NIJC provides legal rights presentations, individual legal consultations, and legal representation annually to more than 4,000 individuals in DHS custody. While NIJC's legal services are primarily focused on six county jails in Illinois, Indiana, Wisconsin, and Kentucky, NIJC has a long track-record of monitoring and reporting on conditions of detention in the immigration context throughout the United States and is well-positioned to speak to difficulties in ensuring that noncitizens in immigration detention are not subjected to abusive or punitive detention practices.

National Immigration Law Center (NILC) is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 35 years, NILC has won landmark legal decisions protecting fundamental rights, and advanced policies that reinforce the values of equality, opportunity, and justice. NILC has earned a national leadership reputation for its expertise in the rights of immigrants, including litigating key immigration detention cases to protect the rights of detained noncitizens. NILC's interest in the outcome of this case arises out of a concern that foreclosing a *Bivens* remedy to immigrants held in immigration detention will severely undermine the rights of all detained noncitizens.

Pennsylvania Immigration Resource Center (PIRC) is a non-profit organization whose mission is to serve vulnerable immigrant populations in Pennsylvania. Through the Department of Justice's Legal Orientation Program, PIRC provides legal orientations, pro se deportation relief workshops, and pro bono referrals to individuals with cases before EOIR and the BIA. All of the individuals who receive services through PIRC's programs are detained by ICE at the York County Prison or the Berks County Residential Center, and the population includes family units and young children. PIRC also provides free direct representation to vulnerable detained individuals, with a focus on asylum seekers, survivors of trauma, the indigent, and those with competency issues.

Project South is a Southern-based leadership development organization that creates spaces for movement building. Project South works with communities pushed forward by the struggle to strengthen leadership and to provide popular political and economic education for personal and social transformation. Project South builds relationships with organizations and networks across the US and global South to inform Project South's local work and to engage in bottom-up movement building for social and economic justice. Project South is working to defend the rights of immigrants and Muslim communities across the US South.

Public Counsel is the nation's largest pro bono law firm based in Los Angeles, California. Founded in 1970, Public Counsel's primary goals are to: (1) protect the legal rights of disadvantaged children; (2) represent immigrant victims of torture,

persecution, domestic violence, trafficking, and other crimes; and (3) foster economic justice by providing underserved communities with access to quality legal representation. In support of these goals, Public Counsel represents indigent immigrants from around the world in their claims before the United States Citizenship & Immigration Services, the Executive Office for Immigration Review, and the federal courts. Over the past eight years, Public Counsel's Immigrants' Rights Project has provided legal services to over 2,500 immigrants detained by the Department of Homeland Security, ranging from legal orientations and pro se assistance to direct representation in removal and bond proceedings.

Refugee and Immigrant Center for Education and Legal Services (RAICES) is a BIA-recognized, non-profit, legal services agency with seven offices throughout Texas. RAICES seeks justice for immigrants through a combination of legal and social services, advocacy, policy, and litigation. In 2015, RAICES provided legal services to over 10,000 individuals, including many adults and families detained in DHS custody. In 2016, RAICES has provided legal services to individuals detained at many detention centers throughout the United States.

Sisters of Mercy of the Americas (SMA) is a Roman Catholic congregation of women committed to stand in solidarity with immigrants. SMA is engaged in a variety of efforts on behalf of undocumented immigrants, including visiting immigrants held in detention, providing alternatives to detention, advocating for just and humane immigration reform, and holding weekly vigils to call attention to the plight of immigrants. SMA's interest

in this case stems from its direct experience with incarcerated immigrants, some of whom have experienced the kinds of abuses described in the brief. Every human being has the right to due process and to seek redress from violations of basic human rights.

Southern Poverty Law Center (SPLC) fights all forms of discrimination and works to protect society's most vulnerable members through litigation, education, and monitoring organizations that promote hate. The SPLC provides pro bono assistance to and advocates on behalf of immigrant detainees throughout the southern United States, including Alabama, Florida, Georgia, Louisiana, and Mississippi. Most recently, SPLC and its partners conducted an investigation into conditions of confinement and due process violations at immigration detention centers throughout the Southeastern United States. SPLC conducted interviews with over 300 detainees and tours of six facilities, including Baker County Detention Center (MacClenny, FL), Etowah County Detention Center (Gadsden, AL), Irwin County Detention Center (Ocilla, GA), LaSalle Detention Facility (Jena, LA), Stewart County Detention Center (Lumpkin, GA), and Wakulla County Detention Facility (Crawfordville, FL). The results are published in a recent report, *Shadow Prisons: Immigration Detention in the South.*

Women's Refugee Commission (WRC) is a national non-profit organization established to advocate for policies and programs that drive lasting change on the ground for women, children, and youth displaced by war, persecution, and natural disaster. The WRC conducts research, monitors detention

facilities, identifies gaps and impediments to due process, and advocates for just and humane policies towards immigrants and refugees. The WRC has visited dozens of immigration detention facilities where it monitors conditions and interviews detainees and facility staff. WRC's numerous reports on conditions of detention and detention policy and WRC's accompanying recommendation and advocacy have led to significant improvements in conditions and access to due process. These reports include: *Locking Up Family Values: The Detention of Immigrant Families, Politicized Neglect: A Report from Etowah County Detention Center*; *Migrant Women and Children at Risk: In Custody in Arizona, Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*, and *Locking up Family Values, Again.*